

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

CIVIL REVISION APPLICATION NO.368 OF 1987

For Approval and Signature

The Hon'ble Mr. Justice S.K. KESHOTE

- 
1. Whether reporters of local papers may be allowed to see the judgment ?
  2. To be referred to the reporters or not ?
  3. Whether their lordships wish to see the fair copy of the judgment ?
  4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950, or any order made thereunder ?
  5. Whether it is to be circulated to the Civil Judge?

-----

BAI FATMA D/O NURBHAI VALIBHAI  
VERSUS  
BAI BIBAN D/O NURBHAI CHHOTUBHAI

-----

Appearance:

MR SK JHAVERI for Petitioner  
MR AT THAKORE for Respondent No.1  
MR MJ THAKORE for Respondent No.4

-----

Coram: S.K. Keshote,J  
Date of decision:21.11.98

ORAL JUDGMENT

#. By this civil revision application under section 115 of the Civil Procedure Code, 1908, in First Appeal Stamp No.4632/83, the plaintiff-petitioner has challenged the order of Taxing Officer dated 28.2.86, under which it is decided that the petitioner is liable to pay the Court fees on the present market value of the suit properties which is computed as Rs.41,000/= in the lower Court as valued by the plaintiff in para-8 of his plaint. Hence he is liable to pay Rs.2,260/= as Court fees and out of which as he has already paid Rs.70/= a deficit of Court fees of Rs.2,190/= has to be paid.

#. The learned counsel for the parties are in agreement that in the suit, the defendant-respondent raised an objection regarding insufficiency of the court fees paid on the plaint. On the basis of pleadings of the defendant-respondent, the learned trial Court framed issue on this point and it has recorded a finding that the court fees paid on the plaint is insufficient. The plaintiff-petitioner has challenged the judgment of the learned trial Court which includes its judgment on the issue of the Court fees in the First Appeal (Stamp) No.4632/83.

#. I fail to see any justification in the procedure which is being adopted here of sending the matter to the Taxing Officer for decision on sufficiency of the Court fees paid on the memo of appeal. It is to be mentioned here that the registry has to point out on the valuation of appeal what court fees has to be paid by the appellant and if the amount of the court fees as found payable by the registry is disputed by the appellant then the matter need not be sent to the Taxing Officer. Sending of the matter to the Taxing Officer unnecessarily gives rise to unwarranted and avoidable litigation in this Court. The appeal is of the year 1983 and more than 15 years have passed in this Court of the litigation only on the question of what proper and adequate court fees are to be paid on the memo of appeal. The appeal has not been registered so far. The decision of the Taxing Officer is also not final as it is challenged by the concerned party by filing revision application. So it is simply a duplication of proceedings. In case the appellant is not in agreement with the amount of court fees ordered to be paid on the memo of appeal by the registry, he can satisfy the court that the decision of the registry is not correct but for this matter, I fail to see why two other intervening remedies are to be availed of, i.e. first the matter has to be decided by the Taxing Officer and secondly, by this Court in the revision application against the said order. This court is already facing

serious problem of mounting arrears of matters and in case this course is adopted in the matter of payment of court fees on the memo of appeals, it will only amount to adding fuel in the fire. It is ultimately the Court who has to decide the matter and for this, I fail to see why this route has to be followed. Only on the objection raised of the insufficient court fees on the memo of appeal, the matter has come up before this Court and this court will decide what should have been the amount of court fees to be paid on the appeal. There may be another side of case where the registry may not be in a position to decide what should be the adequate court fees to paid on the memo of appeal and as such the matter can also be placed as defective matter in the court and the court will decide the same. The procedure adopted in the matter of court fees is only a multiplicity of proceedings and above that a considerable delay in disposal of the main matter. After these objections are decided, the appeal will be registered and as it will be registered in the year 1998, naturally, it has to stand in queue to reach to its turn for hearing with reference to the year of registration. So total 12 to 14 years are wasted of the litigants.

#. In this case, otherwise also, reference of the matter to the Taxing Officer was wholly unjustified. There is an issue on the court fees to be paid on the plaint and that issue has been decided. That finding has been challenged by the appellant before this court and this court has to decide what adequate and proper court fees has to be paid on the plaint. Normally, the parties are to pay in the appellate court the very amount of court fees which have to be paid on the plain. This matter is directly in issue in the first appeal and for which this procedure as adopted is wholly unwarranted and unjustified. In view of this fact, I do not consider it to be appropriate to decide this question as what the proper court fees has to be paid by the plaintiff-petitioner on the memo of appeal and this civil revision application is disposed of with direction that the appeal may be registered subject to the objections of the court fees and it may be placed in the Court for admission. This court will decide either at the stage of admission or at the final hearing stage, this issue. Otherwise also, in this case, the same has to be decided in view of the issue framed by the learned trial Court in this respect and the parties shall abide by decision given by this Court on this point. This civil revision application stands disposed of in aforesaid terms with no order as to costs.

(S.K.Keshote, J.)

[sunil]